

REMARKS

I. INTRODUCTION

Claims 1-10 are pending in the present application. In light of the following remarks, Applicants respectfully submit that all presently pending claims are in condition for allowance.

II. THE 35 U.S.C. § 112 REJECTION SHOULD BE WITHDRAWN

Claims 1-10 stand rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. Specifically, the Examiner states that the recitation “*without regard to the at least one of the candidate sinusoids within said local frequency band that is excluded,*” as recited in claim 1 is not supported by the specification. (See 2/17/10 Office Action, pp. 3-4). To support this contention, the Examiner points to pages 6-8 and equation 8 of the specification. However, Applicants respectfully submit that this portion of the specification, as well as the entire specification, does not negate the cited portion of claim 1. Applicants direct the Examiner’s attention to ¶ [0010] of the published application, which explains the embodiment the Examiner is referring to. This paragraph explains that the

“significance of said candidate sinusoid's amplitude is evaluated by thresholding a ratio of a difference between said candidate sinusoid's amplitude and a weighted mean amplitude of frequency components within said candidate sinusoid's local frequency band *from which at least one of the candidate sinusoids within said local frequency band is excluded*, and a weighted deviation of the amplitudes of frequency components within said local frequency band *from which at least one of the candidate sinusoids within said local frequency band is excluded.*”

(See Specification, ¶ [0010]). The Examiner states that “[t]he selection step is performed using a ratio of the difference of the amplitude of the candidate sinusoid minus the combined amplitude, over the standard deviation for the band.” (See 2/17/10 Office Action, p. 4). Applicants respectfully submit that the Examiner’s interpretation is

incorrect because the Examiner has omitted a vital part of the selection process, namely, the fact that the selection of the candidate sinusoid is “in dependence of the combination of amplitudes *without regard to the at least one of the candidate sinusoids within said local frequency band that is excluded.*” Applicants respectfully submit that this recitation in claim 1 and similarly claims 8 and 10 is sufficiently supported by the specification. Therefore, the withdrawal of this rejection is respectfully requested.

III. THE 35 U.S.C. § 102(b) REJECTION SHOULD BE WITHDRAWN

Claims 1-5, 8 and 10 sand rejected under 35 U.S.C. § 102(b) for being anticipated by Tsutsui et al. (U.S. Patent No. 5,717,821) (hereinafter “Tsutsui2”).

Claim 1 recites, “[a] method of encoding an audio signal by representing at least part of said audio signal by a plurality of sinusoids, the method comprising the steps of: performing, by a computer, an analysis of a first segment of said audio signal; selecting, by the computer, candidate sinusoids based on said analysis; defining, by the computer, for at least one of the candidate sinusoids a local frequency band around a frequency of said at least one candidate sinusoid; combining, by the computer, amplitudes of frequency components within said local frequency band form which at least one of the candidate sinusoids within said local frequency band is excluded; and selecting, by the computer, said candidate sinusoid as a selected sinusoid in dependence of the combination of amplitudes *without regard to the at least one of the candidate sinusoids within said local frequency band that is excluded.*”

The Examiner states that Tsutsui2 discloses selecting the candidate sinusoid in dependence on the combination of amplitudes without regard to the at least one of the candidate sinusoids within said local frequency band that is excluded. (*See 2/17/10 Office Action*, p. 5). To support this assertion, the Examiner refers to steps S8 and S9 of Tsutsui2’s method. However, Applicants respectfully submit that Tsutsui2 utilizes the entire ratio X/Y in step S8, where variable Y includes the candidate sinusoid. So, Tsutsui2 fails to teach or suggest selecting, by the computer, said candidate sinusoid as a

selected sinusoid in dependence of the combination of amplitudes *without regard to the at least one of the candidate sinusoids within said local frequency band that is excluded*, as recited in claim 1. Thus, it is respectfully submitted that claim 1 and its dependent claims 2-5 are allowable over Tsutsui2.

Claims 8 and 10 recite limitations that are substantially similar to those in claim 1. Thus, Applicants respectfully submit that claims 8 is also allowable over Tsutsui2 for at least the foregoing reasons presented with regards to claim 1.

IV. THE 35 U.S.C. § 103(a) REJECTIONS SHOULD BE WITHDRAWN

Claims 6, 7 and 9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Tsutsui2 in view of U.S. Patent No. 5,054,072 to McAulay et al.

Applicants respectfully submit that McAulay does not cure the above-described deficiencies of the Tsutsui2 with respect to claims 1 and 8. Because claims 6 and 7 depend on and, therefore, include all the limitations of claim 1, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 1. Because claim 9 depends on and, therefore, includes all the limitations of claim 8, it is respectfully submitted that this claim is also allowable for at least the same reasons above with respect to claim 8.

CONCLUSION

In light of the foregoing, the Applicant respectfully submits that all of the pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Dated: May 10, 2010

By:

A handwritten signature in black ink, appearing to read 'MJ Marcin', written over a horizontal line.

Michael J. Marcin (Reg. No. 48,198)

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, NY 10038
Tel: (212) 619-6000
Fax: (212) 619-0276